U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 2 0 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment The petitioner seeks employment teaching English to speakers of other languages (ESOL) at the elementary school level in Maryland. At the time she filed the petition, the petitioner taught at , Bladensburg, Maryland, part of the system. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 7, 2012. In a statement accompanying the petition, counsel stated:

> [The petitioner's] petition for waiver of the labor certification is premised on her Master of Arts in Instructional Systems Development . . . [and] about ten (10) years of dedicated and progressive teaching experience . . . and the merits and recognitions received by her in fulfilling her mission to give excellent education and dedicated services to the educational system where her expertise is very much needed.

Academic degrees, experience and institutional recognition are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B) and (F), respectively. Exceptional ability, in turn, is not grounds for the waiver. *See* section 203(b)(2)(A) of the Act. Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner did not demonstrate the significance of the awards documented in the record.

Most of the petitioner's 12 "awards, recognitions and contributions" are certificates confirming her attendance or participation in conferences and training sessions. Two certificates acknowledged that the petitioner taught English classes outside of the school, once at a church and once for the employees of a restaurant. The organization of the record sets two of these certificates apart under the heading "Awards." Of these, one certificate shows that the Education Department at the presented the petitioner with "a during her first year of graduate study there. The record contains no other information about the award or its significance. The other certificate is an ' indicating that the petitioner "earned a score that ranks within the top 15% of all test takers who took this assessment in previous years." The assessment in question was the "Elementary Education: Content Knowledge" test, which the petitioner took in July 2011. A legend on the certificate reads: '
The petitioner claimed nearly a decade of experience before 2011. It appears, therefore, that the petitioner's performance on the assessment compared her not to equally experienced teachers but to "Beginning Teachers." The record does not reveal whether the petitioner took other assessments.

Counsel continued:

> In her four year stint as Teacher, and Coordinator of at the teaching force of George's County Public Schools in Maryland, specifically at Roger [*sic*] Heights [the petitioner] already made a strong impact on the lives of her students and fellow teachers. . . .
>
> She has contributed in the administration of a reading intervention program called a researched [*sic*] based one-on-one peer teaching program, which helps struggling readers improve their fluency and comprehension. The significance of this accomplishment is the records [*sic*] in the Developmental Reading Assessment (DRA) clearly showing significant growth in reading.

The record does not show that the petitioner designed the or conducted the research that led to that design. The petitioner has not established that her familiarity with existing methods distinguishes her from qualified United States workers to an extent that would qualify her for the waiver.

The petitioner stated that she has enrolled in a training program "[i]n an attempt to achieve National Board Certification, the most prestigious credential a teacher can earn." The petitioner stated that

she "will have completed the certificate requirements in April 2012." The petitioner filed the petition in May 2012, but did not submit evidence to show that she had attained National Board Certification, or to establish that such certification resulted from nationally significant contributions to education. A prestigious certification for a particular occupation or profession can support a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(C), but, as noted above, exceptional ability does not establish or imply eligibility for the national interest waiver.

The petitioner submitted letters from administrators and teachers at and university faculty involved with the petitioner's graduate studies or her efforts to qualify for National Board Certification, as well as others who have encountered her work such as officials of her church and parents of her students. Most witnesses attested to the petitioner's skills as a teacher, and/or expressed confidence that she would qualify for National Board Certification, but did not raise the issue of broader impact. An exception is Dr. director of the at the university's , who stated:

> In working with [the petitioner] during our institute and in subsequent programs, I've seen continued convincing evidence . . . of her compelling instructional effectiveness. She is at the cutting edge of pedagogy with her innovative implementation of digital media for literacy. . . . We are planning to continue [the petitioner's] scholarly inquiry and I anticipate important contributions from her work related to critical research in language learning and in digital media literacy.

Dr. provided no further details regarding the petitioner's work as described above. He did not indicate that the petitioner had disseminated her work through publications or professional conferences, or had seen any implementation outside of her own classroom. The assertion that Dr. expects further contributions in the future is inherently speculative and cannot show that the petitioner already qualified for the waiver at the time she filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible beneficiary to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Discussion of the petitioner's potential for future contributions, however sincere or enthusiastic, does not establish a record of existing achievement. Furthermore, the petitioner's research-related work appears to be connected with ongoing doctoral studies, with no explanation of whether such research would continue after the petitioner completed her graduate studies. Graduate study is inherently temporary, and neither requires nor merits permanent immigration benefits.

assistant principal of stated that the petitioner's "community service touches others outside the State of Maryland. Other than volunteering to teach Latino workers English in MD; she has joined the educator mission trip to Peru and worked with Habitat for Humanity in Florida." Community service efforts such as these are separate from her employment and do not establish impact or influence on the field of education at a national level.

The general theme of the witnesses' letters is that, as a dedicated and well-trained teacher, the petitioner is in a position to benefit her students, her employer, and her community. Nevertheless, the plain language of section 203(b)(2)(A) of the Act indicates that substantial prospective benefit to the United States is not grounds for a waiver; rather, it is a prerequisite for consideration for the classification itself, even with the generally required job offer and labor certification.

The petitioner submitted detailed statements about her goals and anecdotes about lessons she has taught. These assertions illustrate the petitioner's work at the classroom level, which does not provide the national-level benefit necessary for the waiver. *See NYSDOT*, 22 I&N Dec. 217 n.3.

On September 11, 2012, the director issued a request for evidence, instructing the petitioner to submit evidence to meet the *NYSDOT* guidelines for the national interest waiver. In response, counsel acknowledged that *NYSDOT* constitutes binding precedent, but asserted that the precedent decision offers little specific guidance as to what, exactly, serves the national interest. Counsel contended that "[t]he obscurity in the law that NYSDOT sought to address has been clarified":

> [T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 ("NCLB Act"), 8 U.S.C. § 6301 et seq., which came into effect upon its enactment in 2001 – that is, more than a decade after IMMACT 90 and MTINA were enacted and three years after NYSDOT was designated as a precedent decision. . . .
>
> Accordingly, the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public elementary education sector.

The NCLB Act, however, did not amend the Immigration and Nationality Act or even mention the national interest waiver. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. In the absence of a comparable provision in the NCLB Act or any other education-related legislation, there is no basis to conclude that the legislation indirectly implied a blanket waiver for teachers.

Counsel claims that the NCLB Act gives the petitioner's work national scope "[b]ecause the NCLB Act is designed to be implemented by and at all levels of the public education system." This establishes the national scope of public education as a whole, and of the NCLB Act as a statute, but it does not follow that every worker affected by the statute produces national-level benefits at an individual (rather than cumulative) level.

Counsel stated that "the National Educational Interests . . . would be adversely affected if a labor certification were required," because the Teach for America program has produced disappointing

results. This assertion incorrectly presumes that the only two available options are to continue relying on the flawed Teach for America program, or to grant the national interest waiver. In repeatedly citing the NCLB Act in support of the waiver claim, counsel did not cite any evidence to show that the NCLB Act had produced better results than Teach for America. More importantly, the purpose of the present proceeding is not to compare the merits of Teach for America and the NCLB Act, but rather to determine whether the petitioner qualifies for an immigration benefit.

Counsel claimed that the labor certification process presents a "dilemma" because "the employer is required by No Child Left Behind (NCLB) Law . . . to employ highly qualified teachers," but, by the Department of Labor's standards, school teachers "require only a bachelor's degree." Counsel claimed, therefore, that "the tedious process of labor certificate [*sic*] will delay if not completely frustrate the employment of 'Highly Qualified Teachers.'"

Section 9101(23) of the NCLB Act, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLB Act require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLB Act also refers to "highly qualified" teachers who are "new to the profession." Thus, neither the petitioner's master's degree nor her experience is required for "highly qualified" status under the NCLB Act. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLB Act's mandate for schools to employ "highly qualified teachers."

The petitioner offered her own statement in an effort to address the *NYSDOT* criteria. The petitioner asserted that "ESOL [is] a Critical Shortage Teaching Area." Generally, a worker shortage makes labor certification more appropriate, not less appropriate, because the process exists to show that qualified United States workers are not available for a particular position. *See NYSDOT*, 22 I&N Dec. 218. A "Critical Shortage" of ESOL teachers would appear to contradict counsel's claim that the labor certification process would likely result in the petitioner's replacement by a less-qualified United States worker.

The petitioner submitted new witness letters. Professor co-director of the M.A. Program at stated that the petitioner's "work as an teacher is national in scope" because "[n]early 1 in 5 Americans speak a language other than English at home" and is an area with a chronic shortage of well-qualified teachers. . . . [The petitioner] would have no problem finding employment as an teacher anywhere in the United States." These assertions relate to a claimed shortage of teachers, which is not the same as showing that one teacher individually benefits the United States at a national level.

Professor former co-director of the same program at likewise attested to "the critical shortage for [*sic*] teachers in our nation" and stated that the petitioner "brings considerable talents in teaching to an under-resourced school and district." The latter assertion underscores the local nature of the petitioner's teaching work.

identified as a "Teacher of English and Spanish" at Maryland, stated:

> With her assistance, I was able to open an English website café called . . . in February, 2007. I had an idea to share my expertise and experience as a successful English learner with many Korean students who struggle to learn English. However, I didn't know how to make a cyber space. . . . [The petitioner] has not only helped me to create my English café, but also maintain the site. . . . Now we have 1,644 members from all over the world. . . . Due to my contribution related to my website, I was offered to apply for permanent residency by USCIS at one time.

Mr. submitted no evidence to show that his web site played any role in his ability "to apply for permanent residency" or has had a measurable impact on education in the United States. The petitioner's unspecified consultative role on does not suffice to establish her eligibility for the national interest waiver.

the petitioner's former classmate at and now an teacher at 's Maryland, organized teacher workshops and made conference presentations with the petitioner. Ms. did not indicate that the petitioner had disseminated her work beyond Maryland and surrounding states, or distinguish the petitioner's presented work from the work of others at such gathering.

A November 17, 2012 letter from the National Board for Professional Teaching Standards (NBPTS) notified the petitioner of the approval of her application for National Board Certification. This approval took place well after the May 2012 filing date and therefore cannot establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 49. In terms of the significance of the certification, the approval letter stated: "The American Council on Education (ACE) now recognizes the National Board Certification process as comparable to graduate level coursework" equivalent to "up to nine semester hours of graduate credit in education." An advanced degree is a requirement for the underlying immigrant classification, not grounds for the additional benefit of the national interest waiver. Furthermore, the petitioner submitted a copy of an NBPTS press release from December 7, 2011, indicating that "nearly 100,000 teachers" – specifically, 97,291 – had achieved National Board Certification throughout the United States. It is evident that National Board Certification entails additional training and expertise, but the record does not show that this certification endows teachers with additional impact or influence.

The petitioner's statement discussed conferences and publications. These forums disseminate work beyond the petitioner's own classroom and can, thereby, effect national-level benefits within the educational community. In a section of her statement with the heading "State and National level Conference Presenter," the petitioner stated:

> When I present at state level conferences, I am interacting with teachers not only from the state of Maryland but from nearby states, Virginia and the District of Columbia, as well as those educators who seek to emulate the successes Maryland has experienced as the number one public school system for four years in a row. . . . Many educators contact me at conferences and through other professional

development opportunities I participate in to seek ideas from me and collaborate with me on diverse projects.

The petitioner's initial submission documented that she gave a presentation at the on November 7, 2009, which was a state rather than national conference. In her subsequent statement, the petitioner stated that she made a presentation at another conference on November 3, 2012, and that she "submitted a conference proposal to present at the 2013 " which "will be a tremendous opportunity to disseminate [her] expertise in teaching classes to educators throughout the nation." The petitioner documented her registration for a national convention in 2010, but the evidence showed only that she had registered to attend the event, not to make a presentation.

As noted previously, the petitioner must establish eligibility as of the petition's May 7, 2012 filing date. Only the 2009 conference took place before that date. The petitioner did not indicate that she had made presentations at any national-level conferences before the petition's filing date, and the 2013 conference was still in the future when the petitioner responded to the RFE.

The petitioner submitted screen printouts from her web log (blog), with three comments from anonymous users praising the site. There is no indication of the number of unique visitors that the site receives, which would provide some idea of the blog's influence. The "Followers" section indicated that there were 31 "members."

The date of the earliest reproduced entry is October 21, 2012, and the comments all date from October 29 and 30, 2012. The site's "Blog Archive" indicates that the petitioner posted four entries in 2012, all of them in October. Like much of the petitioner's other evidence in the RFE response, the blog did not exist until after the petition's May 2012 filing date, and after the September 2012 issuance of the RFE.

The petitioner submitted screen prints showing that two of her articles appeared on the Education Articles web site. The articles themselves are undated, but on each article, the earliest reader comments date from October 30, 2012 (a day after the first anonymous comment appeared on the petitioner's blog). For both articles, the earliest comment is anonymous and begins with the sentence "Thank you for publishing this article." Neither article reports original research. Rather, one article, "Learning Strategies in Vocabulary and Reading for Second Language Learners," described the petitioner's experiences tutoring a student from Thailand, and her review of existing literature to learn teaching strategies. At the end of the article is a list of four references, but the article itself cited an additional source, identified only as The petitioner's other article, " offers "several reasons why [the petitioner] chose to pursue National Board Certification."

Some of the petitioner's activities described above, such as her blog, could convey benefits that are national in scope. All the evidence of such activities, however, came into existence in late October 2012, more than a month after the director issued the RFE. The response to an RFE must establish

eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12). Whether or not the petitioner created the submitted materials specifically in response to the RFE, they did not exist at the time of filing.

Furthermore, evidence of national scope satisfies the second prong of the *NYSDOT* national interest test, but not the third. National dissemination of one's work through publication and presentation does not inherently establish the level of impact and influence necessary to qualify for the waiver. Therefore, even if these materials had existed at the date of filing, they would have provided only partial support for the waiver claim.

The director denied the petition on February 6, 2013. The director acknowledged the intrinsic merit of the petitioner's occupation, but found that the petitioner "failed to explain how the benefits of her employment as a teacher in a Maryland School will be national in scope." The director acknowledged the petitioner's submission of articles and related evidence, but found that the petitioner "failed to establish how her work has impacted her field of endeavor." The director stated that neither the petitioner's professional credentials nor the asserted shortage of teachers was, on its face, grounds for approving the waiver.

On appeal, counsel asserts that the *NYSDOT* decision acknowledged "the absence of [a] clear-cut Congressional standard in understanding the concept of 'in the national interest,' and the mandate for 'flexibility.'" Counsel contends Congress resolved this "obscurity" by passing the NCLB Act three years after the publication of *NYSDOT* as a precedent decision. Counsel claims that "the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public school sector." Counsel, however, identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Contrary to counsel's assertion that the NCLB Act modified or superseded *NYSDOT*, that legislation did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not established that the NCLB Act indirectly implies a similar legislative change.

Counsel notes that the beneficiary in *NYSDOT* was an engineer, and that "the intricacies involving 'Highly Qualified Teachers' are certainly distinct from those of 'Engineers.'" While the specific facts in *NYSDOT* concerned an engineer, the reasoning underlying the three-pronged national interest test is general and not limited to engineers, and nothing expressed or implied in that decision limits its precedential scope to engineers.

Even then, there are some parallels between the fact patters in *NYSDOT* and in the present proceeding. The record indicates that the petitioner "has contributed in the administration of a

reading intervention program called Reading Together Program, a researched [*sic*] based one-on-one peer teaching program." The record does not indicate that the petitioner developed Reading Together or conducted the related research. Compare the following passage from *NYSDOT*:

> Chief Executive of where the beneficiary worked for two years, states that the beneficiary "had rigorous training in the use and application of the world famous ." at NYSDOT, states that the beneficiary "has worked on innovative projects such as segmental arch structures patented by the French company '." It is not clear in what capacity the beneficiary "worked on" the project; in any event, the beneficiary's involvement with and standing alone, does not qualify him for a national interest waiver. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Id. at 221 (footnote omitted). In the same way that the *NYSDOT* beneficiary's training in "the world famous ' did not qualify him for the waiver, the petitioner has not established that her involvement in the Reading Together Program has extended beyond the local level, or that she is responsible for the program's success beyond that local level.

Counsel states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, uses bold type to highlight the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, quoted the statute that supports the director's conclusion. By the plain wording of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Congress has not amended the Immigration and Nationality Act to remove the job offer requirement for teachers. The existence of legislation recognizing the importance of education does not nullify legislation that specifically holds members

of the professions (including teachers) to the job offer requirement that Congress created and has never repealed.

Counsel claims that *NYSDOT* "requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements." Counsel, here, refers to the "extraordinary ability" classification at section 203(b)(1)(A) of the Act. That classification requires "sustained national or international acclaim," and the implementing regulations at 8 C.F.R. § 204.5(h)(3) require a petitioner to meet at least three of ten specified standards. The regulatory definition of "extraordinary ability" at 8 C.F.R. § 204.5(h)(2) requires a demonstration that the beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor." The director did not impose so strict a requirement in the present instance. To say that one has had significant impact on one's field is not the same as saying that one has reached the very top of that field, or has earned sustained national or international acclaim in that field. *NYSDOT* stands as binding precedent and the director did not err by relying on that decision.

Counsel contends that "Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers,'" but counsel cites nothing in the statute, legislative history, or any other official source to support this claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not provided any support for the claim that the NCLB Act is an immigration law.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990 (IMMACT 90) (Pub.L. 101–649, 104 Stat. 4978, November 29, 1990), which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interprets this passage to mean that Congress created the national interest waiver for educators. IMMACT 90, did not merely create the waiver; it extensively amended the Immigration and Nationality Act, and subjected members of the professions, including "scientists and engineers and educators," to the job offer requirement. President Bush's quoted remarks did not specifically mention the national interest waiver, and there is no evidence that the remarks referred particularly to the waiver, rather than to IMMACT 90 as a whole. The national importance of "education" as a concept, or "educators" as a class, does not lend national scope to the work of a single schoolteacher.

Counsel makes several other assertions along the general theme that, because education is in crisis and there are shortages of well-qualified teachers, the petitioner therefore merits the waiver. Counsel discusses an emphasis on "Science, Technology, Engineering and Mathematics," but the petitioner, an [redacted] teacher, does not teach those subjects.

Counsel asserts:

> The 2012 MSA [Maryland State Assessments] Reading results show that out of the 24 Maryland school districts [redacted] ranked near the bottom. . . . The fact that [redacted] did not meet its 2012 AMO [Annual Measurable Objectives] target for

> Reading proficiency underscores the importance of having effective teachers of Reading/Language Arts in each classroom.

At the time of the 2012 MSAs, the petitioner had already worked for for several years. The district's continued poor performance of schools spotlights the continuing need for improved education in the county, but it does not establish that the petitioner's past work has had an impact on education that would justify the national interest waiver.

Counsel has offered, in various guises, the basic assertion that teachers who meet the NCLB Act's definition of "Highly Qualified Teachers" should receive what amounts to a blanket waiver of the job offer requirement. The applicable statute and regulations, however, provide no justification for such a blanket waiver, and appeals to the intrinsic importance of education or the particular challenges that faces do not set the petitioner apart from her peers in a fashion that would justify approval of the waiver on her behalf.

By statute, engaging in a profession (such as teaching) does not presumptively entitle such professionals to the national interest waiver. Congress has not established any blanket waiver for teachers. Eligibility for the waiver rests not on the basis of the overall importance of a given profession, but rather on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.